TO: The Honorable Members of the Senate Labor and Industry Committee
FROM: Associated Builders and Contractors
National Association of Social Workers-PA
National Federation of Independent Business-PA
Pennsylvania Advocacy and Resources for Autism and Intellectual Disability
Pennsylvania Association of Community Health Centers
Pennsylvania Builders Association
Pennsylvania Chamber of Business and Industry
Pennsylvania Council of General Contractors
Pennsylvania Credit Union Association
Pennsylvania Food Merchants Association
Pennsylvania Homecare Association
Pennsylvania Institute of Certified Public Accountants
Pennsylvania Manufacturers' Association
Pennsylvania Restaurant & Lodging Association
Pennsylvania Retailers Association
Pennsylvania State Association of Township Supervisors
Rehabilitation & Community Providers Association
DATE: September 19, 2016
RE: Support S.B. 1360 -- compliance with federal overtime rules

On behalf of our organizations representing a wide range of constituencies, we write to urge your support for S.B. 1360 related to Pennsylvania employers’ compliance with federal overtime rules.

The U.S. Department of Labor determines eligibility for overtime pay and has traditionally enforced a so-called “while collar exemption” based on salary and job duties. While the rules related to this exemption have been updated periodically, the USDOL announced this past May that the wage level at which the exemption is triggered would be increased by over 100 percent, effective Dec. 1, 2016.

The impact of this increase was elucidated at a joint Senate Appropriations and Labor & Industry Committee hearing on June 21st, at which employers and representatives from the nonprofit community, health services and higher education described how this rule will make it more difficult to manage operations and provide critical services. Despite these impacts, enactment of the rule appears inevitable and many employers are developing plans to comply and potentially absorb higher costs. For those who cannot simply increase wages to maintain exempt status, compliance could likely entail converting employees from salary to hourly, which often means not only payment of overtime, but more burdensome record-keeping and less flexibility, forcing employees to follow a rigid work schedule, fewer training opportunities, benefits, etc.

Also discussed at the hearing were federal guidelines that help employers in certain circumstances mitigate the impact of overtime requirements. Unfortunately, Pennsylvania law does not allow employers to utilize many of these accommodations, which means a policy may be compliant under federal statute but still be found to have violated state law. For example, federal law:

- Allows employees to maintain salary status through use of a “fluctuating work week,” under which an employee's regular rate is determined by dividing his or her fixed weekly salary by all hours worked each week, a practice that some courts have held is not permitted by Pennsylvania law;
- Utilizes a more sensible definition of "hours worked" based on the 1947 Portal-to-Portal Act, which clarified that certain "preliminary" and "postliminary" activities did not constitute compensable hours worked;

- Applies standards for qualifying as an exempt employee that differ from the standards under state law, including providing exemptions for certain computer professionals and “highly-compensated employees” that are not available under state law.

As Pennsylvania employers adjust to the new federal overtime rule, S.B. 1360 will reduce these unnecessary and confusing discrepancies between state and federal law.

The new rules will be effective soon and while there is nothing state lawmakers can do with respect to the federal rule itself, Senator Baker's bill will help in a meaningful way those nonprofits, human service agencies, educational institutions and others in your district who will be impacted. We urge you to support this legislation.